

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Willie Young, #285487,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 22-ALJ-04-0202-AP

ORDER OF DISMISSAL

RECEIVED

NOV 28 2022

SC Court of Appeals

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Willie Young (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). On July 13, 2022, Appellant filed this appeal, alleging factual and procedural errors that violated SCDC policy in conjunction with a charge related to the possession of any communication device. For example, Appellant alleged the Department's hearing officer failed to play evidence or read evidence to him in violation of policy and did not follow proper procedures in documenting and hearing his charge. Appellant attached only his step 2 grievance, which was dated May 18, 2022, and identified as KRCI-0169-22, to his notice of appeal. In his step 2 grievance, Appellant alleged factual and procedural errors in conjunction with his charge related to the possession of any communication device. The responsible official denied Appellant's step 2 grievance because the official found there was sufficient evidence to support the conviction, Appellant lost zero days of accrued good-time credit, and Appellant was provided forty-eight (48) hours' notice prior to the hearing.

On July 21, 2022, this matter was assigned to the undersigned. On August 31, 2022, Appellant filed a letter with the Court that addressed the merits of his appeal and requested that certain document(s) be added to the record. The Court construes Appellant's letter as a motion to include certain document(s)—"initial disciplinary hearing record where #37 (898) was scheduled, and D.H.O. stated on record that 21-day extension was due to covid (2/23/2022) that accusing officer was on medical leave, contradicting agency policy and its directive that a 21-day extension will be granted 'once' as one extraordinary circumstance"—to the record. Appellant's motion did not include a certificate of service.



On September 27, 2022, the Court wrote counsel for the Department and provided a copy of the motion.¹ The Court stated it construed Appellant's letter as a motion and noted no certificate of service was included with the motion. Accordingly, the Court requested the Department inform the Court within fifteen days of the Court's letter about whether it agreed with Appellant's requested relief as to including certain documents to the record on appeal.

On September 29, 2022, the Department filed a motion to dismiss pursuant to *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E.2d 211 (2012), and section 1-23-600(D) of the South Carolina Code (Supp. 2021). According to the Department, Appellant's penalties related to this conviction were the following: failed to earn good time credits for the month of the disciplinary infraction occurred; was sanctioned with a loss of canteen, visitation, and phone privileges; and was placed in disciplinary detention. Thus, the Department contends no state-created liberty or property interest is implicated in this case. In support of its position, the Department attached Appellant's step 2 grievance, disciplinary report, and hearing record. The disciplinary report and hearing record show Appellant did not lose any good-time credit; however, he lost 184 days of canteen, visitations, and phone usage; and received disciplinary detention. The sanctions show Appellant did not lose any property because of the conviction.

On October 13, 2022, the Department filed a letter to the Court in response to the Court's inquiry about the Department's position on Appellant's pending motion. The Department stated it was uncertain if it understood Appellant's request but believed Appellant was requesting documents from a disciplinary hearing that was held on February 23, 2022. The Department objected to the inclusion of any documents related to that hearing because the Department asserted that was a separate matter.

On October 7, 2022, Appellant filed a response to the Department's motion to dismiss. According to Appellant, the Department "attempts to mislead this court with a deficient and fabricated record alleging [A]ppellant's appeal involves the loss of earning sentence-related credits when the record is void of such claim." Appellant additionally states that he will provide the Court with "a record that indicates both liberty and property interest[s]" are implicated in this matter. Appellant contends that this matter is "the denial of agency procedural due process, a right guaranteed by agency policy (OP.22.14) and further ensures by 'major' leveled offenses due to the

¹ The Court copied Appellant on this communication.

heightened chance of a protected liberty (property interest being infringed on or lost." Additionally, Appellant asserts that the Department's argument that no state-created liberty or property interest motion is not preserved for review because it was not raised during the grievance process. Appellant asserts that his television was also taken from him as part of this conviction. Finally, Appellant contends that he was also issued the "sanction of extra duty." Appellant attached several documents to his response to the motion to dismiss: (1) an incident report, (2) the step 1 grievance; (3) a disciplinary report and hearing record that is difficult to read; (4) an inmate property inventory sheet that is difficult to read but indicates it was prior to Appellant being placed in lockup in 2022; (5) an inmate offense history that shows Appellant purchased a television; and (6) an inmate property inventory sheet for a transfer from Kershaw Correctional Institution to Evans Correctional Institution.

On October 11, 2022, Appellant filed another response to the Department's motion to dismiss. Appellant repeated similar arguments as before, but he also asserted that he was improperly "labeled a gang member" and "was required to be 2 years disciplinary free to renounce and attain his minimum custody status." Appellant also asserts that the removal of his television was not noted as a sanction. Appellant attached a security threat group validation worksheet; an inmate request that thanked correctional officers for Appellant's renouncement hearing; an inmate request about being spoken to but Appellant was in quarantine; an inmate request to staff member, that referenced a correctional officer lied to him and that there was contraband; and a step 1 grievance from Evans Correctional Institution dated March 29, 2022, and identified as ECI-0129-22, that complained about his television being taken from him.

On October 18, 2022, the Department filed a reply to Appellant's response to its motion to dismiss. According to the Department, "[t]he underlying issue in this appeal is a disciplinary hearing whereby Appellant is seeking the reversal of his March 22, 2021, disciplinary conviction." According to the Department, Appellant's allegations that his television was taken is not preserved for review. The Department also contends that even if it failed to follow its own policies does not automatically constitute a violation of procedural due process. The Department attached Appellant's step 1 grievance and the warden's denial of the grievance to its reply. o

On October 28, 2022, Appellant filed a response to the Department's reply. Appellant repeated his prior arguments and emphasized the issue in *Howard* was a minor level offense whereas he was convicted of a major offense. Appellant asserts that if the Department properly

took his television, the Department should have mailed it home. Moreover, Appellant "submits that his challenge to the violation of his due process rights to agency policy subsumes every state-created liberty right and/or property."

DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See generally* S.C. Code Ann. § 1-23-600(D); *see also Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 757 (2000) (stating the ALC's jurisdiction in inmate appeals is generally limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing because of a serious rule violation); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004) ("ALJD has jurisdiction over all inmate grievance appeals that have been properly filed . . ."); *Howard*, 399 S.C. at 625, 733 S.E.2d at 215 (explaining the ALC has subject matter jurisdiction to "hear properly perfected appeals from the SCDC's final orders in administrative or non-collateral matters").

However, section 1-23-600(D) of the South Carolina Code prohibits the Court from hearing appeals from "an appeal from an inmate in the custody of the Department . . . involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)." In *Howard*, 374 S.C. at 629-30, 649 S.E.2d at 217-18, our supreme court addressed section 1-23-600(D) and the Legislature's amendment of that section post *Furtick v. South Carolina Department of Corrections*, 374 S.C. 334, 649 S.E.2d 35 (2007). Our supreme court acknowledged "the Legislature's authority to limit the jurisdiction of the ALC" and noted "an inmate's loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty interest." *Howard*, 374 S.C. at 629, 733 S.E.2d at 217. Thus, our supreme court held "the ALC may summarily dismiss an inmate appeal that involves *only* the loss of the opportunity to earn sentence-related credits. However, a matter is reviewable by the ALC where an inmate's appeal *also* implicates a state-created liberty or property interest, such as the loss of accrued sentence-related credits." *Id.* at 630, 733 S.E.2d at 218

During the grievance process and on appeal to this Court, Appellant has asserted a variety of purported procedural and substantive due process claims from his conviction for the possession

a communication device. For example, Appellant claimed in his step 2 grievance that the Department did not follow the proper procedures in conducting the hearing on his charge. On another occasion, Appellant contended that the charge was not properly documented and handled. Appellant also asserted in his notice of appeal that the Department's personnel failed to play audio evidence or read evidence to Appellant in contravention of policy.

The Department now seeks to dismiss Appellant's appeal because the appeal does not implicate a state-created liberty or property interest. Appellant objects and asserts a variety of state-created liberty and property interests are implicated by his appeal. The Court addresses these arguments in turn below. Additionally, Appellant contends the Department's arguments about state-created liberty and property interests are not preserved for review because those arguments did not appear in the grievance process.

Appellant misunderstands issue preservation. Issue preservation is generally a burden upon the *appellant*, not the respondent. *See generally I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("[I]t is not always necessary for a *respondent*—as the winning party in the lower court—to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review."); *id.* at 421-22, 526 S.E.2d at 724 ("In contrast, different preservation rules apply to an *appellant*—the losing party in the lower court. An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred."). The Court further notes that the Department is not a court as contemplated in traditional issue preservation case law. Accordingly, the Court finds Appellant's argument on issue preservation is without merit and thus addresses the merits of the Department's motion to dismiss.

In *Al-Shabazz*, our supreme court addressed the procedure an inmate may use in challenging a decision of the Department in a non-collateral or administrative matter. *Al-Shabazz*, 338 S.C. at 368, 527 S.E.2d at 749. In its discussion, the court listed that one of the common ways that these claims arise is when "an inmate is disciplined and punishment is imposed." *Id.* at 369, 527 S.E.2d at 750. The court distinguished between "major" and "minor" disciplinary proceedings. *Id.* at 372 n.8, 527 S.E.2d at 751 n.8. The court explained that major disciplinary hearings include "the potential loss of sentence-related credits" and a minor disciplinary proceeding is one in which the inmate "does not face the potential loss of sentence-related credits, but only lesser penalties

such as extra duty, loss of television privilege, or cell restrictions." *Id.* The court stated the following: "The statutory right to sentence-related credits is a protected 'liberty' interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated." *Id.* at 369-70, 527 S.E.2d at 750; *see also id.* at 369, 527 S.E.2d at 750 ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." (quoting *Bd. Of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972))). The *Al-Shabazz* court noted that due process must be afforded in disciplinary proceedings that involve serious misconduct. *Id.* at 371, 527 S.E.2d at 751.

Here, Appellant faced a level one offense for the possession of a communication device. Appellant *could* have lost earned credits if he had any. Accordingly, pursuant to *Al-Shabazz*, Appellant would have been required to be afforded procedural due process in the adjudication of his charge. *See generally Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").²

However, since our supreme court issued its decision in *Al-Shabazz*, it has issued the decision in *Howard*, which further discussed when summary dismissal is appropriate at the ALC in inmate matters. *Howard*, 399 S.C. at 630, 733 S.E.2d at 218. As noted above, our supreme court explained that it is proper for the ALC to dismiss an inmate's appeal when the appeal does not implicate a state-created liberty or property interest. *Id.*

The Court understands *Howard* to have clarified the decision from our supreme court in *Al-Shabazz*. Specifically, if the discipline imposed upon an inmate does not involve a right to a constitutionally protected liberty or property interest, then procedural and substantive due process do not apply. *See generally Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008) ("Thus, the question becomes whether Cooper's *claim raises a sufficient state-created liberty interest to trigger due process requirements*. If a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's *right* to parole eligibility and, thus, infringes on a state-created

² The Court makes no comment on whether Appellant received procedural due process in the resolution of the possession of any communication device charge at the Department. The Court simply notes *Al-Shabazz*, and other case law, set forth a requirement of procedural due process.

liberty interest." (emphases added)); *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) ("Determining whether an individual has been denied due process requires *an inquiry into whether the interest involved can be defined as liberty or property within the meaning of the Due Process Clause*, and if so, what process is due under those circumstances." (emphasis added)).

Accordingly, the Court must look to see what interest has been implicated by Appellant's conviction for possession of a communication device. The disciplinary report and hearing record show Appellant did not lose any good-time credit; however, he lost 184 days of canteen, visitations, and phone usage; and received disciplinary detention.³ The aforementioned items do not implicate any state-created liberty or property interests that are protected by the Fourteenth Amendment and thus, it is proper for the Court to summarily dismiss this appeal. *See Al-Shabazz*, 338 S.C. at 372 n.8, 527 S.E.2d at 751 n.8 (stating "lesser penalties such as extra duty, loss of television privileges, or cell restriction" are not afforded due process protections); *Dumas v. State*, 675 So. 2d 87, 89 (Ala. Crim. App. 1995) (stating store, telephone, and visitation privileges are not liberty interests and thus an inmate has "no liberty interest in the loss of those privileges"); *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (explaining discipline in segregated confinement does not present the kind of atypical and significant deprivation by which a state-created liberty interest may arise).

Appellant also argues in his October 11, 2022 filing that the conviction for possession of a communication device will also impact his future custody status; however, inmates do not have a vested liberty interest in having a particular status. *See Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996) ("The federal constitution vests no liberty interest in inmates in retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the Constitution."); *id.* ("Within these limits, so far as the federal constitution is concerned, the security

³ The Court notes that in Appellant's October 7, 2022 filing, Appellant alleged he was also required to have extra duty. This does not appear on the disciplinary report and hearing record. If the Department required Appellant to have extra duty, that would be subject to a different grievance, not this grievance for the conviction of possession of any communication device. Nevertheless, *Al-Shabazz* also states that extra duty is viewed as a "lesser penalt[y]" and noted that minor disciplinary proceedings do not afford inmates of a protected liberty interest.

and custody classification of state prison inmates is a matter for state prison official discretion whose exercise is not subject to federal procedural due process constraints.").

Appellant additionally argues that a state-created liberty or property interest is implicated in this appeal because his television was improperly taken from him. Notably, Appellant's step 1 and step 2 grievances, notice of appeal, and August 31, 2022 letter are all devoid of any discussion of the Department taking his television. It was not until Appellant's October 7, 2022 response to the Department's motion to dismiss that Appellant referenced issues with his television.

The Court has reviewed the disciplinary report and hearing record, which show that Appellant did not lose any property as a result of his conviction. The instant appeal arises from Appellant's grievance number KRCI-0169-22, a conviction of 898 for possession of a communication device. While the loss of a television might be grounds for its own grievance, the loss of Appellant's television is not presently before the Court in this appeal. *See generally Young*, 383 S.C. at 458, 680 S.E.2d at 787 ("A court has a limited scope of review of the final decisions of administrative agencies and cannot ordinarily consider issues that were not raised to and ruled on by the agency from which an appeal is taken."). If the Department improperly took Appellant's property as a result of some other action or interpretation of the conviction, the Department's actions could be subject to review if Appellant followed the proper procedure to challenge that decision. Nevertheless, that issue is not reviewable now in this matter, and the Court certainly passes no judgment on the validity of the Department's action or inaction with regards to Appellant's television. The Court is simply focused on the issue Appellant has actually appealed—resolution of his conviction for possession of a communication device.

In sum, the Court finds Appellant misunderstands the role of issue preservation and thus reaches the merits of the Department's motion to dismiss. Upon a review of the motion to dismiss, the Court determines that as a general matter, Appellant was entitled to procedural due process because he faced a level one offense, which could have subjected him to losing good-time credits. However, after reviewing the record before the Court, the Court is convinced Appellant has not lost any liberty or property interest related to the conviction that are protected by the Fourteenth Amendment. Because no state-created liberty interest or property interest are implicated, summary dismissal is appropriate. Finally, the Court passes no judgement on the Department's action or inaction as it relates to Appellant's television because that issue is not a part of this grievance which is presently before the Court.

ORDER

IT IS THEREFORE ORDERED that this matter is **DISMISSED WITH PREJUDICE.**⁴

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

November 4, 2022
Columbia, South Carolina

⁴ Because the Court dismisses this matter based on the lack of a state-created liberty or property interest implicated by this appeal, as evidenced by the penalties Appellant received, the Court need not address Appellant's request to supplement the record with a disciplinary hearing record that purportedly demonstrated evidence of the Department not following the proper procedure. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).